To: Kai Nielson <knielson@marathonoil.com>
From: Glenn Borkenhagen <glenn@inlandgps.com>
Subject: Re: [External] RE: Proposal from Engineering Associates
Cc:
Bcc:
Attached:

Hello Kai -

It is hard to believe how much time has passed since our last correspondence (below). I rang your 713-296-4287 Tuesday afternoon and was glad that number still answers with your name and Marathon Oil!

Shortly after your last email, on 04 April 2019 I signed the contract with Engineering Associates. During 2019 they provided a design for the hillside and investigated materials from three area sources. They issued two invoices that totaled $2,417.33.

2020 was the COVID year and nothing happened on this project that year.

During 2021 I implemented the hillside design furnished by Engineering Associates. That year they modified the original design to make it practical to construct and provided construction observation. They also got involved in obtaining the desired material from the supplier. They issued two invoices that totaled $1,397.08. The total engineering costs of $3,814.41 were considerably lower than the $9,100 estimate. Please note that they used my topography data (no charge to Marathon or Engineering Associates) for design.

Harris Trucking & Construction of Cody installed seven (7) sectional concrete barriers on 13 July 2021 (along the south side of Sheridan Avenue at the bottom of the hillside) and I rented them for two (2) months for a total cost of $3,689.00 (the barriers are still there - apparently I am not the only one who lets things slide a bit!). Harris Trucking & Construction also provided 132 cubic yards of pit-run gravel for a total of $1,921.92.

I used my Volvo EWR150E wheeled excavator (with tiltrotator and tipping trailer) to excavate to the toe at a 16% slope, then added water to "native" material for compaction and rebuilt the slope to the profile shown as "Subgrade" on the design, compacting (using a plate compactor on the Volvo EWR150E) material in lifts 12 inches thick. I used my Bobcat T650 compact track loader to transport the material from the stockpile to the slope area. After the subgrade was inspected and approved by Engineering Associates I used the Volvo EWR150E with tipping trailer to transport the pit run material to the slope area and place the material on the slope per the design. I would place and compact moisture-controlled pit run material for about three feet in the vertical direction, then go back to building compacted subgrade (in lifts12 inches thick, with moisture control and compaction) to design before placing more pit run material. After several such cycles the pit run material reached a crest height that would allow adding about four inches of topsoil and grading a 2% slope to the south that would daylight into existing terrain. I used the Bobcat T650 with grader attachment to finish grading.

From actual hour-meter readings, the Volvo EWR150E started at 35.6 hours and ended at 170.2 hours for 134.6 hours at $150/hour, extension $20,190.00. The Bobcat T650 started at 209.9 hours and ended at 270.1 hours for 60.2 hours at $90/hour, extension $5,418.00. Total equipment charges are $25,608.00.

You can see images of the process and the completed project on my download site at www.inlandwyo.com. From the home page, click on the word "here", then open the folder named "Marathon Pipe Line Parcel", then finally the folder named "12 2021 Hillside Remediation". There is a PDF that explains what the various images are intended to show. Also, the PDF named "Hillside 01 2021-05-25.pdf" is the final design from Engineering Associates. The field reports by Engineering Associates are also available in the fittingly named folder.

Now almost three years later the fines on the as-built surface of the pit run material have washed away exposing the large pebbles and cobbles. The area is well armored against splash erosion and there are no signs of rills or gullies. Last year there was an encouraging amount of yellow clover and some alfalfa growing on the hillside. It remains to be seen what will be growing there this year.

Adding in the previously discussed out-of-pocket expenses for removing the large cottonwood tree ($915.93) brings the total to $35,949.26.

I need to know and understand the tax implications before I can submit a total requested settlement amount. For instance, will Marathon issue a Form 1099 to me for the settlement amount?

Regarding the proposed release you sent on 11 December 2018, I am agreeable to its terms with one reservation. While excavating contaminated material from the hillside (Area B) during 2016 Marathon's contractor was still encountering contamination when their excavator reached its depth limits. There was a brief discussion of renting and using a long-reach excavator to try to dig deeper, but it was decided (by others than myself) to simply leave the remaining contamination in place. It is extremely unlikely, given that the contaminated area is within City of Cody right-of-way (but still within the area covered by my deed) on a steep hillside adjacent to an arterial street, that the remaining contamination will see light of day for the rest of this century or longer but I am not willing to assume responsibility for removing it if it is discovered.

Thanks and best regards,

Glenn Borkenhagen
307-272-5044

At 08:47 PM 4/1/2019, you wrote:

Hi Glen,

Sorry for the delayed response, I have been traveling.

I am on board with including reasonable construction costs as part of the direct payment. From my initial review it appeared that Engineering Associates included there opinion of the â€œprobable construction costâ€ of $2,700 which I thought was to implement plans from line item 1, but I guess it appears that the $2,700 was just to develop that implementation cost which seems a bit redundant and expensive considering they would have already created a plan by completing item 1. That said the contract otherwise looked fine. I have no problem with you signing the contract but understand there is no guarantees especially if the estimated plans and costs end up excessive.

For me to be able to sell the direct payout model to management I need to know a total requested settlement amount for the release prior to being able finalize the payout/settlement and any work done prior to finalizing the settlement (not including my current consultantâ€™s recommendations) may or may not be able to get included. Without the settlement finalized the concern is we end up right back at the same impasse we are currently at but having spent more money (i.e. consultants work ends up unsuitable to you). You have to appreciate that on my end I already have an experienced consultants very strong opinion the site is already near completion and to deviate from that opinion I need both a compelling business case (the release) as well as cost certainty (the set cost) to bring to my management.

With respect to topsoil, itâ€™s really the same situation, we disagree on what is needed to bring the site back to whole, but if you can get me a reasonable cost and are willing to sign the release I can probably get those added on as well.

Alternately, if you want to make this simple and fast and have an idea on the total costs you would need without breaking it out over the various components, send it over, if it fits within the total cost range that I have identified for the redo, we could probably make a deal that way without getting into a back and forth over each line item.

Thanks,

Kai

Sent from my iPhone

On Apr 1, 2019, at 8:37 PM, Glenn Borkenhagen <glenn@inlandgps.com> wrote:

Beware of links/attachments.
Hello Kai -

Please let me know if you find the Engineering Associates proposal to be acceptable. If you do, I will sign a contract with them and they can start design work.

Thanks and best regards,

Glenn Borkenhagen
307-272-5044

<<Following sent at 1358 hrs MDT on Thursday 21 March 2019>>

Hello Kai -

It is my understanding that the direct payment is to include the probable cost of construction, which is still to be established. Please advise if you understood otherwise.

If you feel the proposal is OK, I will sign a contract with Engineering Associates. They will then prepare a design and provide an opinion of probable cost of construction for that design. They will also provide an opinion of probable cost for 900 cubic yards of topsoil.

After those tasks are completed we will have the numbers needed for a direct payment.

Since I will be personally responsible for payment to Engineering Associates for their work, I wanted to make sure their proposal was satisfactory to you before entering into a contract with them.

Please let me know if you find the Engineering Associates proposal to be acceptable.

Thanks and best regards,

Glenn Borkenhagen
307-272-5044

At 12:55 PM 3/21/2019, you wrote:

> Thanks Glen, looks like a good proposal.
>
> With such a clear proposal, I believe it would be straight forward for me to pitch those costs ($10,800) for a direct payment to you in exchange for finalizing the release I previously sent. Let me know your thoughts, and I can get things moving.
>
> Kai
>
> -----Original Message-----
> From: Glenn Borkenhagen <glenn@inlandgps.com>
> Sent: Monday, March 18, 2019 9:12 AM
> To: Nielson, Kai J. (MRO) <knielson@marathonoil.com>
> Subject: Proposal from Engineering Associates
>
> Hello Kai -
>
> The attached PDF is the proposal I received from Engineering Associates, a Cody-based engineering/surveying firm, last week.
>
> I was hoping to have another proposal in hand before forwarding this one to you, but it did not arrive last week.
>
> Note that this proposal will use topography information I have prepared. I did not ask or expect them to do so, but it represents a cost savings.
>
> Regards,

Glenn Borkenhagen
307-272-5044